

CHAPTER 1

FINANCIAL INSTITUTIONS

Article 12

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ARTICLE 12

SMALL MINORITY BUSINESS DEVELOPMENT CORPORATIONS

7-1-940. Definitions.

As used in this article, the term:

(1) "Board of directors" means any board of directors of a corporation created under this article.

(2) "Corporation" means a Georgia small minority business development corporation created under this article;

(3) "Lending institution" means any bank or trust company, building and loan association, savings and loan association, insurance company or related corporation, partnership, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

(4) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one time on member loans made by such member to the corporation, as determined under this article.

(5) "Member" means any lending institution authorized to do business in this state which shall undertake to make member loans to a corporation created under this article, upon its call, and in accordance with this article.

(6) "Member loan" means a loan made by a member upon the call of the corporation pursuant to Code [Section 7-1-947](#).

(7) "Minority person" means a lawful permanent resident of the United States who is:

(A) Black;

(B) Hispanic;

(C) Asian-Pacific American;

(D) Native American; or

(E) Asian-Indian American.

(8) "Small minority business" means any for profit corporation, partnership, proprietorship, association, or other business entity which:

(A) Is at least 51 percent owned and controlled by minority persons and whose management and daily operation are controlled by one or more of the minority persons who own it;

(B) Has gross revenue of less than \$6 million in a 12 month fiscal year;

(C) Has a net profit after taxes for each of the last two taxable years of less than \$1 million;

(D) Employs less than 500 people; and

(E) Is not a lending institution.

(Code 1981, 7-1-940, enacted by Ga. L. 1988, p. 804, 1.)

7-1-941. Creation of corporations; contents of articles of incorporation; subscription and acknowledgment.

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a small minority business development corporation under this article, for the purpose of promoting, developing, and advancing small minority business and, to that end, to exercise the powers and privileges provided in this article, may be incorporated by presenting articles to the Secretary of State, as provided in this Code section and Code [Section 7-1-942](#). The articles shall contain:

(1) The name of the corporation, which shall include the words "Small Minority Business Development Corporation of Georgia," and a recitation that the corporation is organized under this article;

(2) The location of its initial registered office, but such corporation may have branch offices in such other places within the state as may be fixed by the board of directors;

(3) The purposes for which the corporation is founded, which shall include: to promote, stimulate, develop, and advance small minority business and thereby promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Georgia; to encourage and assist, through loans, investments, or other business transactions, in the location of the small minority business and industry in this state and to rehabilitate and assist existing small minority business and industry; to stimulate and assist in the expansion of all kinds of small minority business activity which will tend to promote the small minority business development and maintain the economic stability of this state; to provide maximum opportunities for minority employment, encourage thrift, and improve the standard of living of minorities and other citizens of this state; similarly to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational small minority business developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of small minority business activity in this state;

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) Any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, shareholders, or any class of the shareholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors; and

(6) The amount and number of authorized shares, the par value of each share, and the minimum amount of capital with which it shall do business and, if there is more than one class of stock, a description of the different classes. The minimum amount of capital with which the corporation shall commence business shall not be less than \$50,000.00.

The articles may also contain any provisions consistent with the laws of this state for the regulation of the affairs of the corporation.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take acknowledgments. A copy of the articles so subscribed and acknowledged shall be filed with the department for approval.

(Code 1981, 7-1-941, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1990, p. 176, 1.)

7-1-942. Approval of articles by department.

Whenever the articles shall have been filed in the office of the Secretary of State and approved by the department and all filing fees and taxes prescribed by law have been paid, said entity shall constitute a corporation. Said corporation shall not be authorized to commence business until its articles are approved by the department. Upon such approval by the department, authorized stock of the corporation may thereafter be issued.

(Code 1981, 7-1-942, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1989, p. 1257, 33; Ga. L. 1990, p. 176, 2.)

7-1-943. Standards for approval of articles by department; timing.

(a) Upon receipt of an application for approval of articles from a corporation organized pursuant to this article, the department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the corporation;

(2) That conditions in the locality in which the corporation will transact business afford reasonable promise of a successful operation;

(3) That the applicants may legally invest in the stock of the corporation and that such investment would not be to the detriment of the applicants; and

(4) That the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation.

(b) Within 90 days after receipt of an application for approval of the articles, the department shall issue a certificate either granting or denying permission for the corporation to commence business, provided that in no instance shall the department grant such permission until it has ascertained to its satisfaction that the above conditions and circumstances have been met and that the articles are in accordance with this article.

(Code 1981, 7-1-943, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1990, p. 176, 3.)

7-1-944. Filing departmental approval with Secretary of State.

Upon receiving the approval of the department, the incorporators shall file the same together with the fee specified by Code [Section 7-1-862](#) with the Secretary of State.

(Code 1981, 7-1-944, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1989, p. 946, 73; Ga. L. 1989, p. 1257, 34.)

7-1-945. Corporate powers.

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the laws of this state, the corporation shall, subject to the restrictions and limitations contained in this Code section, have the following powers:

- (1) To elect, appoint, and employ officers, agents, and employees;
- (2) To make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation shall not incur any secondary liability by way of the guaranty or endorsement of the obligations of any person or corporation or in any other manner;
- (3) To borrow money and to do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise), from any lending institution, or from any agency established under federal or state law for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchise, rights, and privileges of every kind and nature or any part thereof or interest therein without securing shareholder or member approval;
- (4) To make loans to any small minority business and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the small minority business applying for said loan shall show that such business has applied for the loan through ordinary lending channels and that the loan has been refused by at least two lending institutions that would be qualified by law to make such a loan, it not being the intention of this article to take from any lending institution any such loans or commitments as may be desired by such organizations generally in the ordinary course of their business;
- (5) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;
- (6) To acquire the good will, business rights, real and personal property, and other assets or any part thereof or interest therein of any small minority business and to assume, undertake, or pay the obligations, debts, and liabilities of any such small minority business; to acquire improved or unimproved real estate for the purpose of constructing small minority business establishments thereon or for the purposes of disposing of such real estate to others for the construction of small minority business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of small minority business establishments;
- (7) To acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any small minority business and, while the owner or holder thereof,

to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(8) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraph (5), (6), or (7) of this Code section, as security for the payment of any part of the purchase price therefor;

(9) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Department of Economic Development, and any other similar state or federal governmental agencies and to cooperate with and assist and otherwise encourage organizations in the various communities of this state in the promotion, assistance, and development of small minority business and the economic well-being of such communities or of this state or any political subdivision thereof;

(10) To redeem or otherwise reacquire its shares under the circumstances and subject to the restrictions now or hereafter set forth for business corporations by the laws of this state;

(11) To make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, which bylaws may establish internal governance procedures and standards, including, but not limited to, procedures for voting by proxy at and for giving notice of meetings of directors and of shareholders and members and the delegation by the board of directors of its authority under the articles of incorporation and this article to one or more committees of the board or to officers of the corporation, and which bylaws may give the board of directors or committees thereof the power to pass resolutions necessary or convenient to carry out the purposes of the corporation;

(12) To contract with the Small Business Development Centers of the University System of Georgia and economic development centers of other colleges and universities, which centers shall also be authorized to contract with the corporation, for the performance of loan application and packaging functions, market studies, and such other activities necessary or convenient to carry out the purposes of the corporation;

(13) To provide technical assistance for both public and private sources of contract opportunities for small minority businesses;

(14) To provide equity funding as authorized for Minority Enterprise Small Business Investment Corporations through the federal Small Business Administration;

(15) To provide for import and export financing for small minority businesses; and

(16) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

(Code 1981, 7-1-945, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1989, p. 1641, 3; Ga. L. 2004, p. 690, 2.)

7-1-946. Bond and stock holding authority; member loans to corporation not discriminatory.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including, without implied limitation, public utility companies and insurance companies and foreign corporations licensed to do business within this state and all lending institutions as defined in Code [Section 7-1-940](#) and all trusts are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the corporation and, while owners of said shares, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as otherwise provided in this article;

(2) All lending institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this article and such membership shall not constitute a violation of the prohibitions contained in Code [Section 7-6-1](#);

(3) Each lending institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State of Georgia, provided that the amount of the capital of the corporation which may be acquired by any member pursuant to the authority granted in this Code section shall not exceed 5 percent of the capital base of such member; and

(4) The amount of shares of the corporation which any member is authorized to acquire pursuant to the authority granted in this Code section is in addition to the amount of shares in the corporation which such member may otherwise be authorized to acquire.

(Code 1981, 7-1-946, enacted by Ga. L. 1988, p. 804, 1.)

7-1-947. Application for membership; requirements for loans to corporation; member loan limits.

(a) Any lending institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

(b) Each member of the corporation shall make member loans to the corporation when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits for member loans may, at the option of the board of directors, be established at the \$1,000.00 amount nearest the amount computed in accordance with this Code section; and

(2) No member loan to the corporation shall be made if immediately thereafter the total amount of the obligations (whether under member loans or otherwise) of the corporation would exceed 50 times the amount then paid in on the capital of the corporation.

(c) The total amount outstanding on member loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital of the corporation then held by such member, shall not exceed the lesser of:

(1) Twenty percent of the aggregate of the capital of the corporation then outstanding plus the total amount then outstanding on all member loans to the corporation, including in said total amount outstanding amounts validly called as member loans but not yet loaned;

(2) The following limit, to be determined each calendar year of membership on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance:

(A) Five percent of the statutory capital base of a bank or trust company;

(B) One-half of 1 percent of the total outstanding loans made by building and loan or savings and loan associations;

(C) Two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) Two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of 1 percent of the assets of fire insurance companies; and

(F) Such limits as may be approved by the board of directors of the corporation for other lending institutions; or

(3) Seven hundred fifty thousand dollars.

(d) Subject to paragraphs (1) and (3) of subsection (c) of this Code section, each call for member loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, as determined by reference to paragraph (2) of subsection (c) of this Code section, reduced by the balance of outstanding member loans made by such member to the corporation and the investment in capital of the corporation held by such member at the time of such call.

(e) All member loans to the corporation shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of interest determined by the board of directors.

(Code 1981, 7-1-947, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1989, p. 14, 7.)

7-1-948. Duration of membership; withdrawal.

(a) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation two years in advance, a member may withdraw from membership in the corporation at the expiration of such notice.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member.

(Code 1981, 7-1-948, enacted by Ga. L. 1988, p. 804, 1.)

7-1-949. Powers of shareholders and members.

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:

- (1) To determine the number of and elect directors as provided in Code [Section 7-1-951](#);
- (2) To amend its articles as provided in Code [Section 7-1-950](#);
- (3) To dissolve the corporation as provided in Code [Section 7-1-956](#); and

(4) To exercise such other of the powers of the corporation, consistent with this article, as may be conferred on the shareholders and the members by the bylaws.

(b) As to all matters requiring action by the shareholders and the members of the corporation, said shareholders and said members shall vote separately thereon by classes; and, except as otherwise provided in this article, such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(c) Each shareholder shall have one vote, in person or by proxy, for each share of stock held by him; and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than \$1,000.00 shall have one additional vote, in person or by proxy, for each additional \$1,000.00 which such member is authorized to have outstanding on loans to the corporation at any one time, as determined under subsection (c) of Code [Section 7-1-947](#).

(d) A holder of or subscriber to shares of the corporation or a member of the corporation shall be under no obligation to the corporation or its creditors with respect to such shares, subscriptions, or membership except in the circumstances set forth in Code [Section 14-2-622](#), except that this subsection does not affect the obligation of a member to lend funds to the corporation pursuant to valid call.

(Code 1981, 7-1-949, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1989, p. 946, 74.)

7-1-950. Amendment of articles.

(a) Except as provided in subsections (b) and (c) of this Code section and subject to the approval of the department, the articles may be amended by the votes of the shareholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the members shall be entitled.

(b) No amendment shall be adopted which is inconsistent with the general purposes expressed in paragraph (3) of subsection (a) of Code [Section 7-1-941](#) or which authorizes any additional class of stock to be issued or which would tend to impair the ability of the department to examine and supervise the corporation.

(c) No amendment of the articles which increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, or maturity date or in the security or credit position of any outstanding loan of a member to the corporation or affects a member's right to withdraw from membership as provided in Code [Section 7-1-948](#) or

affects a member's voting rights as provided in this article shall be made without the consent of each member affected by such amendment.

(d) Within 30 days after any meeting at which an amendment to the articles is approved, it shall be submitted to the department together with such information as the department shall require. If the department finds in its discretion that the proposed amendment is in conformity with the objectives and requirements of this article, it shall issue its certificate approving the amendment. If the amendment is disapproved, the department shall briefly state its reasons for such action to the corporation. The decision of the department shall be conclusive, except as it may be subject to judicial review as provided in Code [Section 7-1-90](#).

(e) Upon the approval of the department, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall, together with the department's certificate of approval, be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this article, shall so certify and endorse his approval thereon.

(Code 1981, 7-1-950, enacted by Ga. L. 1988, p. 804, 1.)

7-1-951. Board of directors; officers and agents.

The business affairs of the corporation shall be managed and controlled by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation shall authorize by its bylaws. The board of directors shall consist of such number, not less than nine nor more than 15, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the shareholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director, which shall be filled as provided in this Code section. The annual meeting shall be held prior to May 1 or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles at a special meeting as provided in this Code section. At such annual meeting or at each special meeting held as provided in this Code section, the members of the corporation shall elect one-fifth of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified, unless sooner removed in accordance with provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders. Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers. Directors shall serve without compensation.

(Code 1981, 7-1-951, enacted by Ga. L. 1988, p. 804, 1; Ga. L. 1990, p. 176, 4.)

7-1-952. Setting apart net earnings; fiscal year.

(a) Each year the corporation shall set apart its net earnings for all the preceding fiscal year. Whenever the amount of minimum capital established in Code [Section 7-1-941](#) shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

(b) Corporations organized under this article shall adopt the calendar year as their fiscal year.

(Code 1981, 7-1-952, enacted by Ga. L. 1988, p. 804, 1.)

7-1-953. Deposit of corporate funds.

The corporation shall not deposit any of its funds in any bank or other financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

(Code 1981, 7-1-953, enacted by Ga. L. 1988, p. 804, 1.)

7-1-954. Departmental power over corporations.

The department shall exercise the same power and authority over corporations organized under this article as is now or hereafter exercised over banks and trust companies by Articles 1 and 2 of this chapter where such law is not in conflict with this chapter.

(Code 1981, 7-1-954, enacted by Ga. L. 1988, p. 804, 1.)

7-1-955. First meeting.

(a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Four of the incorporators shall be a quorum for the transaction of business.

(Code 1981, 7-1-955, enacted by Ga. L. 1988, p. 804, 1.)

7-1-956. Duration of corporation; dissolution.

(a) The period of duration of the corporation shall be 35 years, subject, however, to the right of its shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in subsection (b) of this Code section.

(b) The corporation may, upon the votes of the shareholders and the members of the corporation, voting separately by classes, dissolve said corporation; and such dissolution shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full.

(Code 1981, 7-1-956, enacted by Ga. L. 1988, p. 804, 1.)

7-1-957. State indebtedness not to be created.

Under no circumstances shall the credit of the State of Georgia be pledged to any corporation organized under this article nor shall acts of such corporation in any manner constitute or result in the creation of any indebtedness of the State of Georgia or any county or municipal corporation therein.

(Code 1981, 7-1-957, enacted by Ga. L. 1988, p. 804, 1.)

7-1-958. Tax exemptions, credits, and privileges; occupational license taxes.

(a) Any tax exemptions, tax credits, or tax privileges granted to banks or trust companies, building and loan associations, and other lending institutions by any general laws of this state are granted to corporations organized pursuant to this article.

(b) Every corporation organized and engaged in business under this article shall pay an annual state occupational license tax of \$50.00. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed; provided, however, that no county or municipality shall levy any such occupational license tax in a greater amount than those prescribed.

(Code 1981, 7-1-958, enacted by Ga. L. 1988, p. 804, 1.)